

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
BCD-CV-19-06

PATRIOT MECHANICAL, LLC

Plaintiff

v.

**COMBINED ORDER ON MOTION TO
AMEND AND MOTION PURSUANT TO
RULE 56(f) in RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

MAINE CONTROLS, LLC,
et al,

Defendants

Before the Court is Plaintiff's Motion to Amend its Complaint, along with Plaintiff's Motion pursuant to Rule 56(f) in response to Defendants' Motion for Summary Judgment.

Plaintiff is represented in this matter by Attorney Daniel Feldman and Defendants are represented by Attorney Marie Mueller and Attorney Robert Ruesch.

On December 3, 2018 Plaintiff brought an eleven-count Complaint against the Defendants. By order dated March 20, 2019, the Court granted Defendants' Motion to dismiss Counts I (Fraud); Counts II and VI (Negligence); Counts III and IV (Defamation); Counts VII and VIII (Anti-trust); and Count X (Breach of Confidential Relationship). The Motion to Dismiss

was orally argued on February 26, 2019, the same day that the Court issued a Case Management Scheduling Order (“CMO”).

That Order set a deadline of April 12, 2019 to amend pleadings or join parties. The Motion to Amend pending before the Court is dated November 15, 2019. On November 18, 2019, Defendants filed a Motion for Summary Judgment and in response the Plaintiff filed on November 27, 2019 the pending Rule 56(f) motion. Discovery was set to end pursuant to the CMO on August 30, 2019 but that deadline, along with the deadline to request a jury trial, was extended by an agreed-upon order to October 29, 2019. The trial month set by the CMO, which has not been extended, is March of 2020.

Motion to Amend

The parties have made multiple arguments about the motion to amend. Defendants argue it is untimely, and that it is a futile attempt to revive dismissed claims based on no new information. Plaintiff claims that the motion to amend is not untimely or futile but did concede at oral argument that it was no longer seeking to amend the complaint to add or “revive” any defamation claims (counts III and IV). Therefore, the only claims that Plaintiff now seeks to add are anti-trust claims (counts VII and VIII).

The Court has considered the parties’ arguments about the Plaintiff’s attempt to revive the anti-trust claims. While they both make extensive arguments about the viability of Plaintiff’s anti-trust claims, the Court has concluded that under these circumstances it is simply too late in this litigation for these amendments to be made. Plaintiff is correct that a late request to amend is not, by itself, fatal to amendment. However, there is more to consider here, including the fact that this matter was supposed to be tried this month, and a fully dispositive motion for summary

judgment was filed several months ago. The Plaintiff has failed to articulate how granting this motion under these circumstances is in the interests of justice, particularly where Plaintiff agrees that a separate lawsuit could be filed on these claims. The Plaintiff has failed to convincingly articulate what information was just learned, so late in the process, that would justify the Court having to extend by months further discovery and motion practice. The Court will therefore deny the Motion to Amend as untimely.

Motion brought pursuant to Rule 56(f)

With respect to the Plaintiff's Rule 56(f) motion, the parties agree on the five criteria that the Court must consider in deciding the motion. Defendants seem to concede that Plaintiff meets three of the five criteria, but challenge Plaintiff's ability to establish two of them, specifically whether Plaintiff "has been diligent in conducting discovery, and show good cause why the additional discovery was not previously practicable with reasonable diligence" and to "set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist, and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion." *Simas v. First Citizens' Fed. Credit Union* 170 F. 3d 37, 46 n. 4 (1st Cir. 1999).

Defendants concede that the witness Plaintiff wishes to depose, Mr. Parks, is "a key witness" [Def.'s Opposition, pg. 2] and the Court is persuaded that his testimony is at least arguably relevant as to what, if any, contract may have been formed.

Further, with respect to whether Plaintiff has been diligent in conducting discovery, the Court has reviewed the timeline of events leading up to this motion and finds that Plaintiff was reasonably diligent given the reasons the deposition was continued the first time, as well as other

factors. The deposition of Mr. Parks was mistakenly set for Veterans Day, and the parties agreed to reschedule it. Over the next few weeks the parties were working on different aspects of this litigation, including exchanging discovery. In mid-November Plaintiff was filing the Motion to Amend, and Defendants were working on the Motion for Summary Judgment. The Court has therefore concluded that a brief extension of the discovery deadline would be appropriate to allow for Mr. Park's deposition to be taken. This is the only discovery that will be permitted during this brief period by either party, absent extraordinary cause.

The entry will be: Plaintiff's Motion to Amend is DENIED. Plaintiff's Rule 56(f) Motion is GRANTED. The discovery deadline is extended until April 3, 2020 to permit Mr. Park's deposition to be completed. Plaintiff's Opposition to the pending Motion for Summary Judgment brought by Defendants shall be filed by April 17, 2020, with Defendants' Reply due by April 24, 2020. The Court will then decide if oral argument will be scheduled or the matter taken under advisement.

March 2, 2020

DATE

/S

M. Michaela Murphy
Justice, Business and Consumer Court